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EX PARTE OR LATE FILED

May 13, 1999

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 – 12th Street, SW
Room: TW-A325
Washington, DC 20554

Re: **CC Docket No. 94-54**; "CMRS Interconnection and Resale Obligations"
WT Docket No. 96-6; "Flexible Service Offerings for CMRS"
CC Docket No. 96-61; "Rate Integration for Interexchange Services"
CC Docket No. 96-115; "Customer Proprietary Network Information"
WT Docket No. 97-207; "Calling Party Pays Service Option for CMRS"
WT Docket No. 98-205; "Spectrum Aggregation Limits for CMRS"

Dear Ms. Salas:

On May 5, 1999, Mark Tuller of Bell Atlantic Mobile, Howard Woolley of Bell Atlantic Government Relations and the undersigned met with Kathy Brown, Chief of Staff to Chairman Kennard, to discuss Calling Party Pays. At that meeting, Mr. Tuller provided Ms. Brown with a copy of an April 29, 1999 letter sent to Tom Sugrue, Chief of the Wireless Telecommunications Bureau. In this letter, Mr. Tuller outlines several FCC proceedings that BAM believes warrant expeditious action by the Commission. A copy of this letter is attached.

While a copy of the April 29 letter was filed with the Secretary's office at the time it was sent to Mr. Sugrue, due to an administrative oversight an ex parte was not filed in association with the May 5 discussion with Ms. Brown. This letter serves to correct this oversight. Please include a copy of this ex parte in the record for the above captioned proceedings. If you have any questions, you may call me on (202) 336-7873.

Donald C. Brittingham

Attachment

cc: K. Brown

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S. Mark Tuller
Vice President - Legal and External Affairs
General Counsel and Secretary

April 29, 1999

Thomas Sugrue, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St. SW
Washington, D.C. 20554

Re: ***Top Priorities – "Convergence Without Re-Regulation"***

Dear Tom:

As promised, here are Bell Atlantic Mobile's priorities, coupled with a request for action.

But first a vote of confidence. The vote of confidence is for the positive atmosphere from the Bureau and the Commission during 1999. I'm encouraged by the willingness to recognize the differences between the wireless industry and other segments of the communications business. I'm thinking of your "Wireless Day" and "CNI" plans. In my mind, the Bureau has made progress in refocusing on competition, instead of regulation, as the key driver for wireless.

The request for action is for more of the same, urgently. The wireless industry, and Bell Atlantic Mobile in particular, is poised to offer increasing competition to the local landline exchange business but we need your support. Our ability to do more for consumers – particularly in competing for local usage – depends on the Bureau and the Commission making deliberate efforts to *continuously improve competitiveness and continuously block regulation.* Attached are seven dockets that are critical.

The single most important principle I would suggest guiding your Bureau is what we call ***"Convergence without Re-Regulation."*** The competitive success of wireless *can* begin to converge toward traditional landline traffic – beginning with "minute migration" and "second line migration" and moving toward primary phone displacement. But this can only be done by clearing the way for already competitive wireless carriers to operate the way they know best – competitively – as they become catalysts to accelerate landline competition. Adding regulations to a competitive model, even stripped-down versions, will impact our operation and will prevent us from achieving the Commission's goals, free and open competition.

The top seven rulemakings that are currently our priorities for maintaining and increasing our competitive service to the public are: spectrum cap, flexible use, calling party pays, rate integration, CPNI, reseller interconnection, and antenna polarization. We at Bell Atlantic Mobile look forward to speaking to you at length about these.

Best regards,

Mark Tuller

REGULATORY OBSTACLES TO WIRELESS/LANDLINE COMPETITION

The Commission should complete the following dockets urgently. Clarity on these issues will remove impediments to CMRS carriers' developing the business case for the major capital and resource commitments needed to compete for landline traffic.

1. CMRS SPECTRUM CAP
(WT Docket 98-205. NPRM pending since December 1998.)

If wireless is to make inroads on landline traffic, wireless networks will need to be able to support the same kinds of services and meet the same customer expectations that are characteristic of landline networks. Wireless networks will need to handle sharply higher volumes of traffic, different peak loads, longer-duration calls, and an increasing proportion of data to voice traffic. All of these demands will require significantly more spectrum; the alternative is slower competitive growth and less robust service. The current caps impose a needless constraint on the ability of CMRS providers to accommodate the capacity demands that entering the landline markets effectively will entail.

2. FLEXIBLE USE OF CMRS SPECTRUM.
(WT Docket 96-6. Further NPRM pending since August 1996.)

The FCC has granted CMRS providers the flexibility to offer fixed services over CMRS spectrum, but has still not resolved how such services are to be regulated. The CMRS industry has demonstrated that competition functions as the best regulator. Subjecting CMRS providers to inappropriate landline regulation will suppress wireless carriers' incentive to enter the landline market in conjunction with their mobile service. The FCC should be encouraging new entry by ensuring the absolute minimum degree of regulation is imposed on wireless providers using their CMRS spectrum.

3. CALLING PARTY PAYS.
(WT Docket 97-207. NOI pending since October 1997.)

Wireless services will not be viewed as comparable for landline services for many consumers unless and until a CPP option is available. BAM is committed to deploying such an option. However, regulatory uncertainty has stifled CPP. The FCC can remove that uncertainty by confirming that CPP, like other offerings by wireless carriers, is CMRS. It should also confirm that a disclosure to the calling party that a charge will be assessed for continuing the call is sufficient to create an obligation by the calling party to pay the charge.

4. RATE INTEGRATION.
(CC Docket 96-61. Further NPRM issued April 1999.)

In December 1998, the FCC refused to forbear from extending landline rate integration obligations to CMRS, despite a record that showed the anti-competitive consequences rate integration would have on wireless service. The new NPRM contains proposals which would make those consequences even worse, by forcing wireless carriers to distort their market-responsive pricing, in the name of meeting a policy that

was never intended to apply to wireless. The pricing flexibility that is essential to offer local service in different cities is not compatible with forced rate integration. Forbearance was the right legal and policy result. But this new proceeding directly impacts carriers' business case for entering local markets.

5. **USE OF CPNI BY CMRS PROVIDERS.**
(CC Docket 96-115. Forbearance petitions pending since May 1998.)

Last year, the FCC reversed years of pro-consumer CMRS practices by forcing CMRS providers to segregate the offering of wireless CPE and information services from the offering of CMRS itself. The record clearly shows that customers expect and benefit from bundled offerings, and that the forced segregation of the marketing of service and equipment only impairs communication between customers and carriers without any benefit. The FCC should allow the use of CMRS CPNI to be used to market wireless CPE and information services.

6. **RESELLER ISSUES: BUNDLING AND INTERCONNECTION.**
(CC Docket 94-54. Recon. petition on bundling pending since August 1996. NPRM on interconnection pending since April 1995.)

Given the vigorous competition that marks the CMRS industry, there is no basis in economic theory or in law for the FCC to require CMRS providers either to offer unbundled equipment or physical interconnection to resellers. The FCC never imposed such requirements before, yet the industry has seen rapid growth in competition and steadily lower prices. The resellers' claim that imposing these rules will improve competition lacks any merit, but the FCC needs to clear out these old proceedings to remove the uncertainty over these issues that impairs planning. There is even less plausible basis for such regulation than ever.

7. **CELLULAR ANTENNAS.**
(RM-9387. Rulemaking petition pending since September 1998.)

The FCC currently prohibits cellular carriers from deploying horizontally-polarized antennas for analog service, which restricts the polarization of our combined digital/analog sites as a practical matter. This is an anachronistic rule left over from the 1980s when the FCC imposed detailed technical regulation. Today, competing broadband PCS providers are not subject to this limit. This technical restraint seriously impedes successful competition for landline traffic for several reasons. First, cellular carriers could provide more effective in-building coverage for homes and businesses if not restricted to vertical polarization. Second, customers' phones would be able to detect more incoming calls, because the phones would respond more reliably when placed horizontally (as on a table or in a briefcase). Third, cell sites would be able to be designed more compactly, and therefore deployed more ubiquitously. This technical restraint directly frustrates the FCC's policy goals.